

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Midwest Independent Transmission
System Operator**

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Docket No. ER02-947-000

**COMMENTS OF THE
ILLINOIS COMMERCE COMMISSION**

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.211, the Illinois Commerce Commission ("ICC") hereby submits its comments in the above-captioned proceeding in response to a filing submitted by the Midwest Independent Transmission System Operator ("Midwest ISO").

I. BACKGROUND:

On February 1, 2002, the Midwest ISO tendered for filing with the Federal Energy Regulatory Commission ("Commission") revisions to the Midwest ISO Open Access Transmission Tariff ("OATT") intended to accommodate retail customer choice in Illinois, Michigan and Ohio. ("Attachment T"). The Commission officially noticed the filing on February 6, 2002, wherein the deadline for comments was set at February 22, 2002. The Midwest ISO has requested that its proposal become effective on February 1, 2002 (the same date the MISO has proposed to begin operations under the Midwest ISO OATT).¹

Although the Midwest ISO's Attachment T filing is intended to accommodate retail choice in Illinois, Michigan and Ohio, the ICC's comments will focus solely on the portion of

¹ MISO Transmittal Letter at 1.

Attachment T pertaining to Illinois. Specifically, Attachment T proposes to revise the Midwest ISO OATT, applicable to service in Central Illinois Light Company's ("CILCO") service territory to: (1) define terms specific to Illinois' retail direct access program; and (2) clarify the Midwest ISO's provision of transmission service in the specific Illinois retail direct access context.

The Midwest ISO states that the definitions included in the portion of Attachment T applicable to transmission within the CILCO area are "almost identical to the definitions included by Commonwealth Edison Company and Commonwealth Edison Co. of Indiana in Docket ER99-3886-000, which were accepted, as modified, by this Commission on September 29, 1999." *Commonwealth Edison Company, et al.*, 88 FERC ¶ 61,296 (1999).²

On December 16, 1997, the Illinois Legislature enacted the Electric Service Customer Choice and Rate Relief Law of 1997 ("Customer Choice Law"). The Customer Choice Law made revisions to the Illinois Public Utilities Act, 220 ILCS 5/1-101, *et seq.* (the "Illinois Act") to implement through a phase-in period a retail choice program in Illinois. Section 16-104 of the Illinois Act requires Illinois electric utilities to offer delivery services to classes of retail customers in their service areas, with the first class of customers eligible for delivery services on October 1, 1999.

The Illinois Act defined "delivery services" to include both transmission and distribution as follows:

"Delivery services" means those services provided by the electric utility that are necessary in order for the transmission and distribution systems to function so that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility . . .³

² MISO Transmittal Letter at 2.

³ PUA Section 16-102.

Section 16-108(a) of the Illinois Act further states: “An electric utility shall provide the components of delivery services that are subject to the jurisdiction of the Federal Energy Regulatory Commission at the same prices, terms and conditions set forth in its applicable tariff as approved or allowed into effect by the Commission.”

II. RECOMMENDATION:

The ICC recommends that the Commission direct the MISO to modify Attachment T as follows:

- 1) Revise the Illinois portion of Attachment T applicable to transmission service provided in CILCO’s service area to better accommodate retail direct access in Illinois as shown in Appendix A and explained in Section A below; and
- 2) Apply the Illinois portion of Attachment T, as revised by the ICC in Appendix A, to all MISO utility participants required to provide delivery services under Illinois statute. In particular, the portion of Attachment T relevant to Illinois should be applied to service in the Illinois service territory of Alliant West on behalf of Interstate Power Company and American Transmission Company on behalf of South Beloit Water & Gas Company.

III. DISCUSSION:

A. The Illinois Portion of MISO’s Filed Attachment T Requires Modification

Appendix A to these Comments shows the ICC recommended modifications that must be made to the Illinois portion of the Midwest ISO’s Attachment T in order for it to comport with Illinois’ retail choice regime. The ICC’s proposed modifications are explained in this Subsection of the ICC’s Comments.

1. Section (2.2)

Section 2.2 of Attachment T is designed to provide transmission reservation priority and rollover rights for “existing firm service customers.” To facilitate retail transmission service in Illinois, it is important to make clear, for the purposes of Section 2.2, that retail customers are “existing firm service customers.” In its current form, however, Section 2.2 contains inconsistencies and ambiguities that could compromise this objective. Appendix A of the ICC’s comments contains a revised version of Section 2.2 that would correct these problems and help to clarify the rollover rights of existing firm service customers. The ICC’s proposed changes to accomplish these purposes include the insertion of a missing parenthesis and the addition of a phrase concerning bundled load. The ICC recommends adoption of that Appendix A language for the Illinois portion of MISO’s Attachment T, Section 2.2.

2. Sections (3.5) and (3.6)

Sections 3.5 and 3.6 of Attachment T would adopt two cumulative 150% penalties for transmission customers failing to ensure delivery of energy under the Midwest ISO’s Ancillary Services Schedules 5 and 6 (Spinning and Supplemental Reserve service) with respect to CILCO’s service area. The Commission first approved these penalties in a filing made by CILCO as transmission and ancillary services provider.⁴

These penalties provide a financial incentive for CILCO’s transmission customers to transact with suppliers of reserve capacity that have a very low risk of being unable to deliver energy when called upon by CILCO to deliver energy. The use of such penalties may have been appropriate when CILCO was providing transmission service under CILCO’s OATT. However, once the Midwest ISO becomes operational, CILCO will no longer be providing transmission service and such penalties will not be appropriate as part of Attachment T. Inclusion of such

⁴ See, *Central Illinois Light Co.*, 89 FERC ¶ 61,117 (1999).

provisions in Attachment T would constitute undue discrimination *vis a vis* transmission service provided by the MISO to transmission customers in other MISO service areas.

If the Midwest ISO believes that such penalties are necessary to ensure reliable delivery of energy from units designated as transmission capacity reserve, then the Midwest ISO should make a filing to incorporate such penalties into Sections 5 and 6 of its OATT, and parties should be given the right to comment on that proposal. Such penalties, however, are not appropriate in the current case and should be excluded from Attachment T. These types of penalties do not facilitate retail direct access in Illinois and discriminate against unbundled service in CILCO's service territory. Accordingly, Sections 3.5 and 3.6 of Attachment T should be deleted.

3. *Section (7.3)*

Section 7.3 permits the Midwest ISO, as transmission provider, to immediately terminate transmission service to an Illinois alternative retail energy supplier ("ARES") that fails to make full payment to the MISO within the designated time period allowed. Such termination is permitted, however, only if Illinois retail service tariffs provide for the continuation of retail service by another supplier (other than the ARES that the MISO has terminated).

Section 7.3 should be deleted from the Illinois portion of Attachment T. The provision does nothing to accommodate retail direct access in Illinois. Indeed, Section 7.4 references the ICC's authority to de-certify an ARES and transfer that load to another supplier. It is this ICC authority referred to in Section 7.4 that facilitates a smooth retail direct access program in Illinois and protects retail customers.

Section 7.3, on the other hand, is designed solely to benefit MISO by providing it with an additional method to discontinue providing transmission service to an ARES. The Commission

should not provide the MISO with this additional authority. The regular provisions of the Section 7.3 that already are included in MISO's OATT provide the MISO with sufficient recourse should an ARES fall behind on transmission service payments to the MISO. Indeed, the MISO's existing OATT Section 7.3 permits the MISO to initiate a proceeding at the Commission through which it can obtain authorization to discontinue transmission service to an ARES upon a proper showing.⁵ Additionally, the MISO or any other interested party can seek to have an offending ARES de-certified by the ICC. Upon such de-certification, Section 7.4 permits the MISO to terminate transmission service.

For all these reasons, Section 7.3 is unnecessary and should be deleted from the Illinois portion of Attachment T.

4. Section (24.1)

Section 24.1 of attachment T outlines the transmission customer's responsibilities regarding the installation of metering and communications equipment. Specifically, the last sentence in Section 24.1, as it appears in Attachment T, is unclear regarding the conditions under which a transmission customer is to retain ownership of the metering equipment. As the paragraph is currently constructed, it is unclear if the Transmission customer is to retain ownership only in situations pertaining to dynamic scheduling or otherwise. Accordingly, the ICC recommends that Section 24.1 of Attachment T be modified as shown in the ICC's Appendix A.

⁵ Beyond this, the existing provisions of the MISO OATT already impose stringent credit standards on any entity seeking to obtain transmission service in the first instance. See, e.g., OATT Section 11.

B. The Illinois Portion of Attachment T, as Modified by the ICC in Appendix A, Should be Applied to All Illinois Transmission Owning Participants in the MISO Including Alliant West (on behalf of Interstate Power Company) and American Transmission Company (on behalf of South Beloit Water & Gas Company).

As filed by MISO, the Illinois portion of Attachment T would apply only to CILCO. However, Alliant West and American Transmission Company are both current members of the MISO and both are required to offer open access retail transmission in their Illinois service territories. The Illinois portion of Attachment T, therefore, should also apply to them.

As stated *supra*, the Illinois Customer Choice Law requires Interstate Power Company as an electric utility operating in Illinois to provide delivery services to retail customers in its Illinois service territory. Given that Interstate Power Company is a subsidiary of Alliant West, Section 16-108(a) of the Illinois Act places the burden of providing “the components of delivery services that are subject to the jurisdiction of the Federal Energy Regulatory Commission” on Alliant West. Given that Alliant West is a transmission-owning member of the Midwest ISO, the ICC recommends that the MISO be required to apply the Illinois portion of Attachment T, as revised by the ICC in Appendix A, to Alliant West, on behalf of Interstate Power Company.

Similarly, South Beloit Water, Gas & Electric Company (“South Beloit”) has an obligation to provide retail direct access to customers in its territory. South Beloit has transferred ownership of its transmission facilities to its affiliate, American Transmission Company.⁶ In the same way that the Illinois Act places the burden of offering the transmission component of “delivery services” for Interstate Power Company on Alliant West, so too does the American Transmission Company have an obligation to offer the transmission component of delivery services on behalf of South Beloit. Accordingly, the ICC requests that the Commission

⁶ See *American Transmission Company LLC*, 95 FERC ¶62,096 (2001)

direct the MISO to apply the Illinois portion of Attachment T, as revised by the ICC in Appendix A, to American Transmission Company, on behalf of South Beloit.

The ICC believes that, to the extent practicable, uniformity in transmission tariffs across Illinois utilities provides benefits to transmission customers and promotes retail direct access in Illinois. In short, uniform application of the Illinois portion of Attachment T will advance this objective.

IV. CONCLUSION:

WHEREFORE, for each of the aforementioned reasons, the Illinois Commerce Commission respectfully requests that the Commission direct the Midwest ISO to adopt the modifications explained herein, and illustrated in Appendix A, to the Illinois portion of MISO's proposed Attachment T. Additionally, the Illinois portion of the MISO's Attachment T, as modified by the ICC in Appendix A, should be applied to all Illinois utility participants in the MISO. Adoption of the ICC's proposed revisions will help to provide clarity for transmission customers involved in retail choice in Illinois and facilitate compliance with the Illinois Customer Choice Law by both the Midwest ISO and the associated Illinois utilities.

Dated: March 5, 2002

Respectfully submitted,

/s/ Thomas G. Aridas

ILLINOIS COMMERCE COMMISSION

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APPENDIX A

Provisions of Attachment T Applicable to Illinois

2.2 Reservation Priority For Existing Firm Service Customers: Existing firm service customers (wholesale requirements and transmission-only, with a contract term of one-year or more or any retail customer as defined in Section 1.11(ii) of this Attachment T), have the right to continue to take transmission service from the Transmission Provider when the contract expires, rolls over or is renewed, or when Bundled Load customer first requests unbundled transmission service. This transmission reservation priority is independent of whether the existing customer continues to purchase capacity and energy from the Transmission Owner or elects to purchase capacity and energy from another supplier. If at the end of the contract term, the Transmission Provider's Transmission System cannot accommodate all of the requests for transmission service the existing firm service customer must agree to accept a contract term at least equal to a competing request by any new Eligible Customer and to pay the current just and reasonable rate, as approved by the Commission, for such service. This transmission reservation priority for existing firm service customers is an ongoing right that may be exercised at the end of all firm contract terms of one-year or longer or when a Bundled Load customer first requests unbundled transmission service. If competing existing firm service requirements customers apply for service that cannot be fully provided, the priority rights will be ranked in accordance with first-come, first-served principles. If firm service customers tie, then the capacity for which they receive priority rights under this Tariff shall be apportioned on a pro rata basis.

~~**3.5 Operating Reserve – Spinning Reserve Service:** Where applicable the rates and/or methodology are described in Schedule 5. In the event that the entity, which is the source of Transmission Customer's Operating Reserve – Spinning Reserve Service fails to deliver energy when required, Transmission Customer shall be charged a penalty equal to (i) 150% of the actual cost to Transmission Provider to provide or obtain the energy plus (ii) 150% of the Schedule 5 charge.~~

~~**3.6 Operating Reserve – Supplemental Reserve Service:** Where applicable the rates and/or methodology are described in Schedule 6. In the event that the entity, which is the source of Transmission Customer's Operating Reserve – Supplemental Reserve Service fails to deliver energy when required, the Transmission Customer shall be charged a penalty equal to (i) 150% of the actual cost to Transmission Provider to provide or obtain the energy plus (ii) 150% of the Schedule 6 charge.~~

~~**7.3 Customer Default:** In the event the Transmission Customer fails, for any reason other than a billing dispute as described below, to make payment to the Transmission Provider on or before the due date as described above, and such failure of payment is not corrected within thirty (30) calendar days after the Transmission Provider notifies the Transmission Customer to cure such failure, a default by the Transmission Customer shall be deemed to exist. Upon the occurrence of a default, the Transmission Provider may initiate a proceeding with the Commission to terminate service but shall not terminate service until the Commission so approves any such request; provided that, so long as Transmission Owner's retail service tariffs subject to the jurisdiction of the State~~

~~of Illinois provide for continuation of service to affected retail customers as described in Section 1.11(ii), by another supplier than is a Transmission Customer, then the Transmission Provider may, upon default by a Transmission Customer who is not such a retail customer, immediately terminate Transmission Service to the defaulting Transmission Customer for the load of any such retail customers and provide electric utility service to affected retail customers in accordance with a state retail access program. In the event of a billing dispute between the Transmission Provider and the Transmission Customer, the Transmission Provider will continue to provide service under the Service Agreement as long as the Transmission Customer (i) continues to make all payments not in dispute, and (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Transmission Customer fails to meet these two requirements for continuation of service, then the Transmission Provider may provide notice to the Transmission Customer of its intention to suspend service in sixty (60) days, in accordance with Commission policy, or in the case of a state required retail access program that provides for continuation of retail service to affected retail customers by another supplier that is a Transmission Customer, the Transmission Provider may immediately terminate Transmission Service as provided above.~~

24.1 Transmission Customer Obligations: Unless otherwise agreed, the Transmission Customer shall be responsible for installing and maintaining compatible metering and communications equipment to accurately account for the capacity and energy being transmitted under Part II of the Tariff and to communicate the information to the Transmission Provider. For retail customers, as defined in Section 1.11 of this Attachment T, the requirements of this Section 24.1 ~~requirement~~ will be satisfied by the maintenance of metering that complies with the rules and regulations of the Illinois Commerce Commission concerning metering and any applicable tariffs of the Transmission Owner except for the situation where special equipment is required for dynamic scheduling, which would be covered under a separate agreement. ~~Such equipment shall remain the property of the Transmission Customer.~~